



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,095	09/29/2000	Richard V. Halbert	MCTA002/02US	2168
758	7590	02/04/2005	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			POND, ROBERT M	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/677,095

Applicant(s)

HALBERT ET AL

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of Claims 35-80 is withdrawn in view of the newly discovered reference(s) to Pallakoff, Clearwater and Fisher, and Ando.

Rejections based on the newly cited reference(s) follow. All pending claims (35-80) were examined in this non-final Office Action.

Terminal Disclaimer

1. The terminal disclaimer filed on 30 May 2003 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of U.S. Patent 6,101,484 has been reviewed and is accepted. The terminal disclaimer has been recorded.

35 USC § 101

2. The Examiner interprets Claims 50-64 as providing a non-trivial practical application in the technological arts in light of the specification.

Specification

3. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of Claims 35-80 is withdrawn in view of the newly discovered reference(s) to Pallakoff, Clearwater, and Fisher. Rejections based on the newly cited reference(s) follow. All pending claims (35-80) were examined in this non-final Office Action.

Terminal Disclaimer

1. The terminal disclaimer filed on 30 May 2003 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of U.S. Patent 6,101,484 has been reviewed and is accepted. The terminal disclaimer has been recorded.

35 USC § 101

2. The Examiner interprets Claims 50-64 as providing a non-trivial practical application in the technological arts in light of the specification.

Specification

3. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 35-80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant claims a buying-group sale that is not defined and need not be performed on-line. The specification refers to a buying group as a co-op, or cooperative, wherein the participant bids are pooled to achieve price per quantity discounts. For examination purposes, the Examiner assumed aggregate demand sale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 35, 38, 40-42, 48-50, 53, 55-57, 63-65, 68, 70-73, 79, and 80 are rejected under 35 USC 103(a) as being unpatentable over Pallakoff (Paper

#5, patent number 6,269,343), in view of Clearwater (patent number 5,394,324) and Fisher et al. (patent number 5,835,896 hereinafter referred to as "Fisher").

Pallakoff teaches a system and method of aggregating buyers into a buying group, or team, for purchasing goods online from participating sellers. Pallakoff further teaches:

- Defining an online buying group sale for a featured item: aggregates buyers' demand into a buying group; join buying team; buyers collectively agree to pool purchasing power; buying team or buying group defined (see at least abstract; Fig. 1 (11-15); Fig. 2 (21, 28); col. 1, lines 53-67; col. 2, lines 20-53).
- Storing in a storage device a data repository including at least price and quantity data for the featured item: (see at least Fig. 3 (31); Fig. 4 (43-46); col. 12, lines 54-67).
- Accepting inputs from prospective buyers in the form of offers for the featured item: (see at least Fig. 3 (33-35); Fig. 5 (51-57); Fig. 6 (61-68); col. 6, line 47 through col. 7, line 59).
- Using the inputs from the prospective buyers to modify the data repository: receives offers from buying team member that changes the data in the database and presents the change (see at least Fig. 2 (25); col. 3, line 67 through col. 4, line 6).

- Sales goal; reducing inventory; increasing sales; increasing market share:
after seller (please note: a seller is represented as a human being using a computer connected making inputs to the online marketing system) enters an offer to sell, the system presents the offer on one or more web sites for buyer viewing until the date or time limit passes or the aggregate demand rises to the maximum available amount a seller may have in inventory (please note examiner's interpretation: i) seller reaches a sales goal after reaching a threshold or maximum available amount, ii) selling maximum amount achieves: inventory reduction and increases sales for a particular item (e.g. only 50 items were in seller's inventory), and iii) selling any quantity of goods in a particular market increases market share (e.g. computers)) (see at least Fig. 1 (11a-x, 12a-x, 13, 13b); col. 2, lines 6164; col. 3, lines 56-60; col. 6, lines 38-46).
- Establishing start time, end time, minimum quantities, starting price: seller establishes a start time, end time or date limit, minimum quantities and starting price thresholds (see at least Fig. 3 (31); col. 4, lines 7-8, 20-40; col. 11, lines 25-27).
- Seller specifies multiple demand thresholds: 2 to 5 @ \$10; 6 to 20 @ \$8.00; 21 to 50 @\$4.00 (please note examiner's interpretation: each threshold represents a seller's sales goal) (see at least col. 3, lines 44-64).

- Displaying a yield amount from sale of the featured item: displays aggregated demand throughout the on-going group sale (see at least Fig. 2 (25); col. 3, line 66 through col. 4, line 6).
- Systems: remote user computers connected over the Internet to market server (see at least col. 2, line 52 through col. 3, line 27).
- Code: server running software (see at least col. 3, lines 11-27); the reference inherently discloses code segments stored in a computer readable medium that permits group sale functions to be performed.

Pallakoff teaches all the above as noted under the 103(a) rejection and teaches a) online auctions, b) the seller providing price and quantity data that defines a price curve (e.g. price versus quantity threshold), and c) presenting the price, quantity data, and aggregate demand updates data during the on-going sale that define the group sale price curve. Pallakoff, however, does not specifically disclose displaying a price curve. Clearwater teaches an online auction system and method of connecting buyers with sellers. Clearwater further teaches one skilled in the art being capable of implementing in software buy bids plotted as a function of the volume and price to yield a demand curve (please note: price curve defined by the Applicant is same as demand curve) (see at least abstract; Fig. 5 (60, 62); col. 6, lines 6-17). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Pallakoff to display a curve as a function of quantity versus price as

taught by Clearwater, in order to graphically depict a price curve of an on-going sale, and thereby provide buyers and sellers an alternative way to visualize the ongoing group sale results.

Pallakoff and Clearwater teach all the above as noted under the 103(a) rejection and teach a) online auction systems, b) the seller providing price and quantity data that defines a price curve (e.g. price versus quantity threshold, and c) displaying a price curve, but do not disclose the seller modifying an existing offer during an on-going sale by changing price or quantity. Fisher teaches prior art systems not allowing for dynamic adjustment of pricing in an interactive method to respond to market conditions such as supply and demand. Fisher teaches a system and method for an online auction system and teaches automatic price changing or manual input from an operator to raise or lower prices of products during an on-going sale (e.g. while quantity is available, over a period of time). Fisher further teaches changing price or quantities during an on-going sale allowing the seller to respond quickly to market conditions while keeping the price of the merchandise as high as possible to the seller's benefit, and raising or lowering prices in order to impact product quantity sold (please note examiner's interpretation: i) seller modifying an existing offer is modifying an on-going sale, ii) seller modifying an originally offered price during an ongoing sale to either increase or decrease a price with respect to the originally entered price results in new price range, iii) selling any quantity of an item increases market share and increases sales) (see at least abstract; Fig. 4 (26); col. 2, lines

Art Unit: 3625

46-58; col. 11, lines 44 through col. 12, lines 62). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Pallakoff and Clearwater to implement seller control of pricing or quantity during an on-going sale as taught by Fisher, in order to allow the seller to respond to supply and demand market conditions, and thereby attract sellers desiring to maximize sales, increase market share, or reach inventory goals.

Pertaining to system Claims 35, 38, 40-42, 48, and 49

Rejection of Claims 35, 38, 40-42, 48, and 49 is based on the same rationale as noted above.

Pertaining to article of manufacture Claims 65, 68, 70-73, 79, and 80

Rejection of Claims 65, 68, 70-73, 79, and 80 is based on the same rationale as noted above.

6. **Claims 36, 37, 39, 51, 52, 54, 66, 67, and 69 are rejected under 35 USC 103(a) as being unpatentable over Pallakoff (Paper #5, patent number 6,269,343), and Clearwater (patent number 5,394,324) and Fisher (patent number 5,835,896), as applied to Claims 35, 50, and 65, further in view of Official Notice (regarding definition of gross margin or gross profit hereinafter referred to as "ON1").**

Pallakoff, and Clearwater and Fisher teach all the above as noted under the 103(a) rejection and teach or suggest raising or lowering price during a sale (please note examiner's interpretation: cost held constant), but do not disclose

gross margin. This examiner notes that by definition, gross margin or gross profit margin is the difference between the price received by a company for its products and services and the cost of producing them (Barron's Dictionary of Business Terms). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Pallakoff, and Clearwater and Fisher to disclose gross margin as taught by ON1, in order to convey selling any amount of product or the maximum available amount of product based on a decreased price while cost is held constant reduces gross margin.

Pallakoff, and Clearwater and Fisher teach all the above as noted under the 103(a) rejection and teach or suggest raising or lowering price during an on-going sale, but do not disclose maximizing gross profit margin. This examiner notes that by definition, gross margin or gross profit margin is the difference between the price received by a company for its products and services and the cost of producing them (Barron's Dictionary of Business Terms). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Pallakoff, and Clearwater and Fisher to disclose maximizing gross profit margin as taught by ON1, in order to convey selling any amount of product or the maximum available amount of product based on an increased price while cost is held constant increases gross margin.

Pertaining to system Claims 36, 37, and 39

Rejection of Claims 36, 37, and 39 is based on the same rationale as noted above.

Pertaining to article of manufacture Claims 66, 67, 69

Rejection of Claims 66, 67, 69 is based on the same rationale as noted above.

7. **Claims 43, 58, and 74 are rejected under 35 USC 103(a) as being unpatentable over Pallakoff (patent number 6,269,343), Clearwater (patent number 5,394,324), and Fisher (patent number 5,835,896), as applied to Claims 42, 57, and 73, further in view of Official Notice (regarding definition of histogram hereinafter referred to as "ON2").**

Pallakoff, and Clearwater and Fisher teach all the above as noted under the 103(a) rejection and teach or suggest a) tracking and displaying the aggregate demand (please note examiner's interpretation: over time), and b) displaying a price curve, but do not disclose a histogram. The Examiner notes that by definition, a histogram is a representation of a frequency distribution by means of rectangles whose widths represent class intervals (e.g. by Examiner: time) and whose areas are proportional to the corresponding frequencies (e.g. by Examiner: aggregate demand) (Merriam-Webster Dictionary). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Pallakoff, and Clearwater and Fisher to display a histogram as taught by ON2, in order to provide a visual relationship between time and aggregated demand, and thereby provide a visual convenience.

Pertaining to system Claim 43

Rejection of Claim 43 is based on the same rationale as noted above.

Pertaining to article of manufacture Claim 74

Rejection of Claim 74 is based on the same rationale as noted above.

8. **Claims 44, 59, and 75 are rejected under 35 USC 103(a) as being unpatentable over Pallakoff (patent number 6,269,343), Clearwater (patent number 5,394,324), and Fisher (patent number 5,835,896), and ON2 (regarding definition of histogram), as applied to Claims 43, 58, and 74, further in view of Ando (patent number 6,032,125).**

Pallakoff, Clearwater and Fisher, and ON2 teach all the above as noted under the 103(a) rejection and teach or suggest a) modifying a price curve, and b) displaying a price curve and supply curve, but do not teach direct manipulation of the price curve display. Ando teaches a method and system for forecasting the demand for products from the fluctuation trend of sales results on the basis of the sales results or products. Ando teaches creating tables and graphics using spreadsheets, and further teaches plotting demand curves based on spreadsheet entries. Ando teaches sales unit price, and further teaches direct manipulation of a curve by changing the graph using drag and drop of the mouse (please note examiner's interpretation: provides visual graphing convenience by eliminating spreadsheet entry steps) (see at least abstract; Fig. 7; col. 1, lines 13-15; col. 3, line 25 through col. 4, lines 38; col. 7, line 28-40). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the

method of Pallakoff, Clearwater and Fisher, and ON2 to provide direct manipulation of a displayed curve as taught by Ando, in order to reduce spreadsheet entries, and thereby provide a visual convenience.

Pertaining to system Claim 44

Rejection of Claim 44 is based on the same rationale as noted above.

Pertaining to article of manufacture Claim 75

Rejection of Claim 75 is based on the same rationale as noted above.

9. **Claims 45-47, 60-62, and 76-78 are rejected under 35 USC 103(a) as being unpatentable over Pallakoff (Paper #5, patent number 6,269,343), Clearwater (patent number 5,394,324) and Fisher (patent number 5,835,896), ON2 (regarding definition of histogram), and Ando (patent number 6,032,125), as applied to Claims 44, 59, and 75, further in view of Official Notice (regarding ordinary skill the arts hereinafter referred to as "ON3").**

Pallakoff, Clearwater and Fisher, ON2, and Ando teach all the above as noted under the 103(a) rejection and teach or suggest a) modifying price and quantity data that defines a price curve, b) displaying a price curve, c) entering data into a spreadsheet format that defines a plotted graph, and d) directly manipulating a curve using mouse drag and drop, but do not specifically disclose translating the modified price curve to data. This examiner takes the position that one of ordinary skill in the art would ascertain the original stored data used to generate the curve from the spreadsheet entries is changed to reflect correct entries for a modified curve in order to maintain the graphical representation of the curve

Art Unit: 3625

modified by the user and provide a useful tool. Therefore It would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Pallakoff, Clearwater and Fisher, ON2, and Ando to translate price curve to data in a repository as taught by ON3, in order to maintain the graphical representation of the curve modified by the user, and thereby provide a useful tool for the user.

Pertaining to system Claims 45-47

Rejection of Claims 45-47 is based on the same rationale as noted above.

Pertaining to article of manufacture Claims 76-78

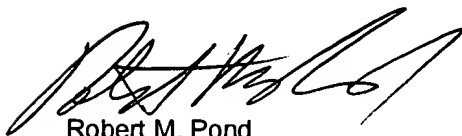
Rejection of Claims 76-78 is based on the same rationale as noted above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 703-605-4253. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert M. Pond
Primary Patent Examiner
January 31, 2005